

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1043 of 2016

and

C.M.P.No.5823 of 2016

G.R.Indira

... Petitioner

vs.

1.G.R.Balasubramaniam
2.G.R.Vasanth Kumari @ Vasantha Bala
3.G.R.Girija
4.G.R.Thangavelu
5.S.G.Ramkumar
S.G.Shanmugasundaram
6.Gomathi Sundaram
7.Suresh Sundaram
8.Shoba Sundaram

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the docket order dated 06.02.2016 passed in I.A.No.66 of 2016 in O.S.No.529 of 2004 on the file of the III Additional District Judge, Coimbatore.

For Petitioner : Mr.C.D.Sugumar

Fore Respondent-4 : Mr.R.Bharath Kumar

ORDER

This civil revision petition has been filed against the order passed in I.A.No.66/2016 in O.S.No.529/2004 on the file of the trial court, namely Court of the III Additional District Judge, Coimbatore. The said application came to be filed for eschewing the evidence of DW3 on the ground that his evidence in

the chief examination in the form of proof affidavit was wrongly accepted by the court below when the proof affidavit had not been attested. The learned trial Judge, without passing an order either allowing or dismissing the said application, passed the impugned order dated 06.02.2016 to the effect that the application would be disposed along with the suit. Aggrieved by the same, the petitioner who is the plaintiff in the original suit, has come forward with the present revision invoking the power of superintendence of this court under Article 227 of the Constitution of India.

2. The learned counsel for the 4th respondent on whose behalf, DW3 was sought to be examined, submits that the 4th respondent concedes the challenge made to the proof affidavit on the ground of absence of attestation and consents for scrapping the evidence of DW3 with liberty to the 4th respondent to call the very same witness as DW3, who will file a fresh affidavit with proper attestation. An endorsement to the said effect has been made by the learned counsel for the 4th respondent. It is also represented on behalf of the petitioner and the 4th respondent that the other respondents have no say in this matter and hence an order can be passed based on the above submission made on behalf of the 4th respondent.

3. Accordingly, the endorsement made by the learned counsel for the 4th respondent is recorded. Using the power of superintendence of this court under Article 227 of the Constitution of India, this court sets aside the order of the trial court dated 06.02.2016 made in I.A.No.66/2016 in O.S.No.529/2004 directing for the disposal of the IA along with the suit and

allow the C.R.P. with the result that the said I.A.No.66/2016 shall stand allowed and the evidence of DW3 already recorded shall stand scrapped. However, the suit shall be reopened and the 4th respondent/4th defendant shall be permitted to file fresh and proper proof affidavit of the very same witness as DW3. Since the suit was filed originally in the year 2001 and 14 years have gone, this court deems it appropriate to issue a direction to the trial court to complete the trial and dispose of the suit before the end of April 2016. It is made clear that the suit is reopened by the order of this court itself and no fresh application of recalling DW3 is necessary. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

31.03.2016

Index : Yes/No
Internet : Yes
asr

To

The III Additional District Judge, Coimbatore

Note:

Issue order copy on
01.04.2016

P.R.SHIVAKUMAR, J.

asr/-

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